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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Applications of ) MM Docket No. 92-316  
RIVERTOWN COMMUNICATIONS CO., INC. ) File No. BPH-911008ME  
SAMPLE BROADCASTING COMPANY, L.P. ) File No. BPH-911010MA  
For Construction Permit )  
for a new FM Station on )  
Channel 282C3 in Eldon, Iowa )  
To: The Review Board

REPLY TO EXCEPTIONS OF RIVERTOWN COMMUNICATIONS COMPANY, INC

Respectfully Submitted,

John S. Neely  
Miller & Miller, P.C.  
P.O. Box 33003  
Washington, DC 20033

December 23, 1993

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### SUMMARY

Sample Broadcasting Company, L.P., ("Sample") replies to the Exceptions of Rivertown Communications Company, Inc., filed December 10, 1993.

The ID found correctly in Sample's favor on the basic qualifying issues. O-Town Communications, Inc., is not a real-party-in-interest and Sample is a bona fide limited partnership applicant. Carmela Sample-Day has been completely independent in the preparation and prosecution of Sample's application. Bruce Linder has had no involvement therein. The totality of the evidence supports that neither O-Town nor Bruce Linder will have any control over Sample or its general partner.

Rivertown was properly denied civic enhancement credit for David Brown. Rivertown failed to adequately describe its claim for this credit in its application on the "B" cut-off date. As such, any late-filed claim is an impermissible comparative upgrade which must be denied.

Sample was properly awarded a minority enhancement and credit for auxiliary power.

Sample is the comparatively superior applicant. Moreover, the recent decision of the U.S. Court of Appeals for the D.C. Circuit in Susan Bechtel v. FCC does not affect this conclusion. Without integration, Sample would still prevail with a minority preference, superior broadcast experience and auxiliary power credit, as compared to Rivertown which has a slight diversification demerit and less broadcast experience.

The grant of Sample's application must be upheld.

REPLY TO EXCEPTIONS OF RIVERTOWN COMMUNICATIONS COMPANY, INC.

Sample Broadcasting Company, L.P. ("Sample"), by its attorney, and pursuant to Section 1.276 of the Commission's rules, hereby replies to the Exceptions filed December 10, 1993, by Rivertown Communications Company, Inc., ("Rivertown") to the Initial Decision, FCC 93D-21, ("ID") of Administrative Law Judge John M. Frysiak, ("ALJ"). Rivertown does not except to the ID's resolution of the strike application issue (§ 84-85), the programming issue (§ 96) and the misrepresentation issue (§ 97) in Sample's favor, nor to the ID's denial of Rivertown's request for a pioneer preference (§ 104). Accordingly, these holdings are final and no longer in issue.

1. O-Town Communications, Inc., is not a real-party-in-interest of Sample.

The ID resolved the real-party-in-interest issue correctly in Sample's favor. The totality of the record and Commission policy fully support this conclusion.

The ALJ added the issue as a result of statements made allegedly by Mark McVey ("McVey") about the relationship between O-Town Communications, Inc.,<sup>1</sup> ("O-Town") and Sample. McVey is a 20% voting shareholder and officer of O-Town. In resolving the issue, the ALJ had to review the record evidence and evaluate the credibility of the witnesses. The full hearing record, including the oral testimony of McVey, Carmela Sample-Day, and Bruce Linder, completely supports the ID's

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<sup>1</sup> Licensee of Station KKSI Eddyville, Iowa.

holding that O-Town has no involvement in Sample; it is clear that Ms. Sample-Day has made all decisions on behalf of Sample, and will continue to do so in the future. ID at ¶ 95.

The Commission will generally defer to the ALJ's well-considered conclusions when they are supported by substantial evidence, particularly where such judgements partake of credibility findings. Abacus Broadcasting Corp., 8 FCC Rcd 5110, n. 8, (Rev. Bd. 1993). Where a fair estimate of all the relevant evidence supports the ALJ's conclusions, they will be upheld on appeal. The ID will be reversed only when its conclusions are not supported by the record. Sun Over Jupiter Broadcasting, Inc., 8 FCC Rcd 8206 (Rev. Bd. 1993) (proceeding remanded for further evidence where ALJ made unsupported findings about an applicant's participation in a separate mutually exclusive proceeding).

Rivertown's argument in support of its exceptions on this issue (pp. 5-15 of its Exceptions) picks at select facts. This is misleading, for it fails to consider the record as a whole.

First, Rivertown asserts that O-Town failed to timely report an alleged ownership arrangement between Mark McVey and Donald and John Linder<sup>2</sup> which occurred in connection with O-Town's application in 1989 and that such failure implicates O-Town in this proceeding. Rivertown's argument is of no

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<sup>2</sup> They are the father and brother of Bruce Linder. Bruce Linder became a principal of O-Town in 1991, well after O-Town's application for Eddyville was granted. (TR 219, 240).

relevance here. First, there is no proof that there was a firm understanding or arrangement about the future ownership of O-Town which had to be reported.<sup>3</sup> Secondly, the matters asserted by Rivertown relate to the alleged behavior of an O-Town principal in another proceeding. Rivertown did not seek an issue regarding O-Town's application in this proceeding; it has not demonstrated a nexus with Sample. There is no showing how a reporting omission by the principals of O-Town would have any bearing on how Ms. Sample-Day will operate her proposed Eldon station. Neither John Linder, Donald Linder nor McVey are parties to Sample's application. Also, there is no showing that the Linder family acts in concert. For example, Bruce Linder has had broadcast interests apart from other members of his family, i.e., Pelican Rapids, MN and St. James, MN. (Sample Ex. 2) The instant proceeding is not a proper forum to investigate O-Town.

At page seven of its exceptions, Rivertown argues that the ALJ made faulty credibility findings on the testimony from Sample's witnesses. Rivertown's support for such a claim is only that, according to its interpretation of paragraph 32 of the ID, Mark McVey testified inconsistently: on the one hand

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<sup>3</sup> Even had there been something to report, the responsibility to do so was McVey's, principal of O-Town in 1989. The only record evidence on this point is McVey's testimony under cross-examination where he was asked to recall events which happened years ago. The record is not clear that McVey had entered into an agreement with the Linders before O-Town's application was granted. Rivertown produced no Linder testimony on this issue.



that he stated publicly at the KKSI studios in April 1991 that KKSI and the Eldon station should be tied together so that it could be heard from the studios all the way to the Mississippi river, and saying on the other hand that in June 1991 he not yet spoken to anyone connected with KKSI about a joint programming arrangement between the new Eldon station and KKSI. However, taken in context, there is no inconsistency here.

The record reflects that in April 1991, Mark McVey learned for the first time from a consulting engineer that a party was preparing to petition the Commission to allot a new FM channel to Eldon, Iowa. Moments after he learned of the Eldon allotment proceeding, McVey believes that he may have reacted with spontaneous off-the-cuff remarks about the potential new station. He does not have a clear recollection of those remarks. TR 231-233, 250, Sample Ex. 5. In June 1991, during a general discussion between McVey and Brown regarding local marketing agreements, McVey suggested that any new permittee at Eldon, including Brown, should consider such an arrangement with station KKSI. McVey had not discussed a local marketing arrangement with any principal of O-Town; he did not know how the other principals of O-Town would feel about such an arrangement. As only a 20% voting shareholder, McVey had no authority to bind O-Town into such an arrangement (TR 231, Sample Ex. 5, pp. 5, 10). Thus, the record reflects that prior to his June 1991 conversation with David Brown,

McVey made spontaneous remarks but had not spoken to anyone with decision making authority connected with O-Town about an LMA between KKSI and the Eldon station. Thus, McVey's testimony is consistent and there is no substance to this exception. The ALJ's credibility findings are well-supported by the record and should be affirmed.

Mark McVey testified that he does not recall making all of the comments attributed to him. The important point is not whether he said certain words, but that he had no basis to support the statements attributed to him. He had no discussions with any principal of Sample or O-Town regarding the operation of Sample's station; he saw no corporate documents to support the alleged remarks. He never consulted with Bruce Linder about Sample's transmitter site, and does not know what site Sample selected ultimately. (Sample Ex. 5) He has no knowledge of the nature of the arrangement between the principals of Sample. McVey asked Mr. Linder about the Sample application, but was told nothing. TR 256, 257. At ¶ 91 of the ID, the ALJ, who observed the witnesses on the stand, finds Mr. McVey's testimony credible.

While Rivertown claims the testimony of Sample's witnesses is self-serving, the same may be said of David Brown's testimony. Moreover, Rivertown ignores the effect of the testimony of William Collins, its own witness. Mr. Collins believed that Mr. McVey's remarks concerning the relevant issues were "loosely put" and not a "serious proposal."

Rivertown Ex. 5; ID at ¶¶ 32, 80. Rivertown had full discovery and has been unable to educe any demonstrative evidence to support its charges against Sample's qualifications. The ID has correctly ruled in Sample's favor. Cannon Communications Corp. 5 FCC Rcd 2695 (Rev. Bd. 1990) *rev. denied*, 6 FCC Rcd 570 (1991).

2. Sample is a bona fide applicant.

Contrary to Rivertown's far fetched allegations and selective reading of the record, the bona fides of Sample's limited partnership are fully supported by the totality of the record.

Rivertown's allegation that Ms. Sample-Day is not suited to run a radio station ignores her four-year college degree in communications (Sample Ex. 2) and her eleven years broadcast experience, including management, (Sample Ex. 4).<sup>4</sup> Ms. Sample-Day is a capable broadcaster who has proven her ability and actively prosecuted the application. Her activities include, among other things, investigating potential engineers and attorney's before selecting her legal and engineering consultant's (Sample Ex. 2, TR 112); visiting potential tower sites and speaking with land owners before securing reasonable assurance of her desired site, resecuring assurance of the site after it was sold during the pendency of her application,

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<sup>4</sup> Prior broadcast experience is not required to receive integration credit as general manager. See, e.g., Gloria Bell Byrd, 7 FCC Rcd 7976 (Rev. Bd. 1992).

establishing the applicant's budget; setting up the bank account, paying the applicant's bills, setting up the public inspection file, arranging for the local public notices, and, investigating potential studio space. (Sample Ex. 2).

In Coast TV, 5 FCC Rcd 2751 (1990) the Commission stated it would not look into pre-formation activities absent some indication of post-formation violation of the insulation provisions by the passive partner. Bruce Linder has followed the limitations upon him in the limited partnership agreement. There is no need to consider his pre-formation activities. At ¶ 94, the ID agrees that Mr. Linder's involvement is entirely consistent with his position as a passive, fully-insulated limited partner [citing Evergreen Broadcasting Company, 6 FCC Rcd 5599 (1991)].

Rivertown would have the Commission believe that Mr. Linder is indifferent to Ms. Sample-Day's background. This is not supported by the record. Ms. Sample-Day and Mr. Linder are not strangers. They had got to know one another well before joining to form the limited partnership. Sample Exs. 2, 3, TR 301-302. Ms. Sample-Day was employed by O-Town, of which Mr. Linder is a principal, for a full year prior to filing the application. Sample Ex. 4. He was able to observe her work performance and how she handled herself. He had sufficient contacts with her to make an independent determination that she was someone he could trust to run the Eldon station. Sample Ex. 3. Prior to joining forces, they discussed radio

station operation, programming and formats, and Mr. Linder asked Ms. Sample-Day about her employment history, aspirations and goals. Sample Ex. 2. Sample's principals were adequately acquainted to assure that the arrangement is bona fide.

The circumstances of this case do not fall within the prototypical situation where a minority general partner with no broadcast experience is entrusted with 100% control of the proposed station by a limited partner who barely knew him or her. Poughkeepsie Broadcast Limited, 6 FCC Rcd 2497, 2398 (1991). Instead, Sample is akin to the general partner in Intermart Broadcasting Gulf Coast, Inc. 8 FCC Rcd 2937, ¶ 17 (Rev. Bd. 1993). Therein, full integration credit was awarded for a general partner who had broadcast experience, actively participated in the formation of the applicant and in the preparation and prosecution of its application, and will have a meaningful position at the proposed station.

As to Sample's financial arrangements, Rivertown fails to cite compelling evidence to support its claim that they allow Linder to exert control in the future. Rivertown relies on speculation that "should" Sample default on its loan to Bruce Linder and "if" the general partner is unable to repay it, that Mr. Linder's creditor's rights will create undue influence over Ms. Sample-Day. Rivertown has not shown that the station will default or is even likely to default on its loan. Rivertown has not shown that Mr. Linder has any intention to use undue influence. When Rivertown pursued this line of

questioning with Bruce Linder at the hearing, the ALJ ruled correctly that it was irrelevant and speculative. TR 336.

The relative monetary investment of the general and limited partners is of no decisional significance where the applicant is bona-fide. Harry S. McMurray, 8 FCC Rcd 3168, ¶ 21, (Rev. Bd. 1993) *affirmed*, FCC 93-524, released December 10, 1993. Independent Masters, Inc., 104 FCC 2d 178 (Rev. Bd. 1986) Sample has proven its bona-fides.

There is no evidence of any undue influence. Moreover, Mr. Brown testified on behalf of Rivertown that he believed Mark McVey was only speculating (emphasis supplied) that Sample-Day would find that she would be controlled by Bruce Linder. Rivertown Ex. 4, ¶ 8; ID at ¶ 79.

3. The denial of Rivertown's request for civic enhancement is fully supported by Commission precedent.<sup>5</sup>

The ID was correct in denying Rivertown credit for civic enhancement to its integration credit. The applicant has the burden to prove its integration proposal. Bradley, Hand and Triplett, 89 FCC 2d 657 (Rev. Bd. 1982). Rivertown has not sustained this burden.

Rivertown seeks civic enhancement for David Brown<sup>6</sup> on the basis of his affiliation with six civic organizations and as

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<sup>5</sup> Matters relating to integration may be moot as a result of Susan M. Bechtel v. FCC, infra.

<sup>6</sup> It does not except to the denial of civic enhancement credit for Ellen Bowen.

a recipient of one award. Merely receiving an award for unknown service is no basis for civic enhancement absent a showing of the basis for the award. Civic enhancement is not to be awarded as a gratuity for mere good deeds. Newton Television, Ltd. 3 FCC Rcd 553, ¶ 9 (Rev. Bd 1988). Membership in the Cancer Society, Care and Share, Isaac Walton League and Fairfield Jaycees, absent a description of duties is insufficient to merit civic enhancement. The record provides no basis to determine whether Mr. Brown's activities, if any, extended beyond paying dues or being listed on a membership roster, neither of which merit civic enhancement credit. Scottsdale Talking Machine and Wireless Co., 6 FCC Rcd 7539, 7544 (Rev. Bd. 1991). Rivertown has also failed to show how his relationship with Care and Share, the Great Western Expedition or the Isaac Walton League demonstrates a knowledge of and interest in the welfare of the community warranting civic enhancement credit. Eve Ackerman, 7 FCC Rcd 2493, ¶ 15 (Rev. Bd. 1992). The Commission is in no position to guess about an applicant's relationship to any particular activity. The Board has no obligation to develop evidence for an applicant. Bible Broadcasting Network, Inc., 7 FCC Rcd 432, n. 3, (Rev. Bd. 1991). The ID's denial of civic enhancement credit for David Brown must be sustained.

In addition, the Commission has ruled that if "an applicant fails to disclose its integration proposal by the amendment-as-of-right date, it will receive no credit for in-

tegration in the comparative hearing." A uniform cut-off date permits parties in comparative cases "to identify the relative strengths and weaknesses in the integration proposals" and "eliminates integration gamesmanship" such as improving one's comparative position beyond the relevant date. Revision of Form 301, 4 FCC Rcd 3853, ¶¶ 56-58 (1989), Metro Broadcasting, Inc., 99 FCC 2d 688, n. 9, (Rev. Bd. 1984). The "submission of a standard integration statement after designation for hearing does not give rise to an opportunity to upgrade any previously submitted integration proposal." Proposals to Reform the Commission's Comparative Hearing Process, 6 FCC Rcd 3403, n. 3 (1991).

Rivertown's application on the amendment-as-of-right date stated only "David W. Brown also claims enhancement for civic activities." It did not identify any activities, their location, or any dates. (See Exhibit 1 to Sample's Proposed Findings of Fact and Conclusions of Law) Only in its post-designation integration statement did Rivertown detail civic activities for David Bowen. Commission policy precludes recognition of the late-filed disclosure of civic activities, as it is an impermissible comparative upgrade. Linda U. Kulisky 8 FCC Rcd 6235, ¶ 6-7 (Rev. Bd. 1993), (applicants required to disclose all claims for qualitative credit by the amendment-as-of-right date).

4. Auxiliary Power credit properly awarded to Sample

Sample's credit for auxiliary power must be upheld.



Rivertown's novel argument is devoid of authority and has no logical basis. Clearly, one generator will permit the station to remain on the air when power to that facility is lost. Rivertown assumes that when power is lost at the studio it will also be out at the transmitter. However, such is not necessarily the case. It is common that commercial power to one area may be out while power continues to be supplied to other areas. In addition, if the generator is at the transmitter and the studio loses power, it may be possible to transmit directly from the transmitter site. Rivertown does not propose even one such generator; its claim that credit is given only for two generators is meritless.

The Commission has credited proposals for just one auxiliary power generator. See, e. g., WVOC, Inc., 45 FCC 2d 420, 423 (Rev. Bd. 1974), "... (Applicant) is also entitled to some credit for proposing an auxiliary power source..." (Emphasis added). Accordingly, Sample receives a slight credit for its auxiliary power proposal.

5. The ID has correctly awarded minority enhancement credit to Sample.

Rivertown's only argument against the award of a minority enhancement credit to Sample is based on counsel's argument that the record demonstrates no nexus between Ms. Sample-Day's Hispanic background and the potential for greater diversity of programming in Sample's service area. Rivertown's arguments are meritless. It concedes that no "nexus" showing is

required. Metro Broadcasting, Inc., 110 U.S. 2997 (1990). Moreover, notwithstanding Rivertown's speculation as to how the current constituency of the United States Supreme Court may rule on the subject, the Commission's minority preference, as applied, has been adjudged constitutional. The ID applied the Commission's standards correctly.

6. Sample is the comparatively superior applicant.

Sample is the comparative winner, having a diversification advantage over Rivertown and credit for auxiliary power in addition to a decisive integration edge. It receives 100% integration credit, while Rivertown receives no more than 55% credit. Given this disparity,<sup>7</sup> comparison of the qualitative enhancements is not necessary. However, should Rivertown receive 100% integration credit, Sample would still prevail in that it has a diversification advantage, a substantial minority preference, current service area residence/civic credit, future local residence credit, broadcast experience, and auxiliary power which by far exceeds the credit Rivertown receives for Brown's slight diversification demerit, 55% vintage service area residence and broadcast experience credit and Bowen's 45% service area residence and three years

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<sup>7</sup> Even if Bowen's position is considered managerial in nature, she may receive only 22.5% integration credit, bringing Rivertown's total integration to 77.5%. The difference between Sample with 100% and Rivertown is still sufficient to overcome any qualitative advantage. Kennelwood Broadcasting Co., 6 FCC Rcd 1350 (Rev. Bd. 1991) (12.5% differential in integration credit cannot be overcome by qualitative attributes).

broadcast experience. Linda Crook, 3 FCC Rcd 354 (Rev. Bd. 1988)(residence in proposed community of license from birth until 25 years of age and then spent 50% of her time in the community thereafter);<sup>8</sup> Radio Jonesboro, Inc., 100 FCC 2d 941, 945 (1985).

Sample acknowledges that the Commission has been ordered by the U.S. Court of Appeals for the District of Columbia Circuit to discontinue use of the integration criterion in deciding comparative cases for new stations. Susan M. Bechtel v. FCC, Case No. 92-1378, slip. op. (D.C. Cir, December 17, 1993). In addition, the Bechtel Court was not asked to consider, and did not overturn, the Commission's diversification criterion.

Bechtel, however, does not require the Board to vacate or overturn the grant of Sample's application. Rivertown and Sample have expended substantial resources prosecuting their applications through a complete evidentiary hearing proceeding using the rubric of the 1965 Policy Statement without objection. Neither Sample nor Rivertown excepted to the Commission deciding this proceeding with the approach set forth in its Policy Statement on Comparative Broadcast Hearings, 1 FCC 2d 393 (1965). Therefore, this aspect of the ID has become a

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<sup>8</sup> Whereas Linda Crook received slight credit for 25 years of residence in the proposed community of license, the weight for David Brown's 22 years of service area residence has been commensurately reduced. Residence within the proposed community of license is more heavily weighted than service area residence. Policy Statement, supra.

final order, no longer subject to review or reconsideration, and is not properly before the Commission. When an applicant does not seek timely review of a particular ruling and it becomes a final order, it is no longer the proper subject for review. Weyburn Broadcasting Ltd. Partnership v. FCC, 984 F. 2d 1220 (DC Cir. 1993). In Bechtel, the Court ruled that an applicant [Galaxy] which had not challenged the integration policy was not properly before the Court on that issue. Bechtel at 23-24.

However, should the Commission rule that the integration criterion is not relevant here, Sample submits that it is still the superior applicant in this proceeding. Sample is subject to no diversification demerit, and entitled to a minority preference, 11 years recent broadcast experience for its active general partner and auxiliary power credit. Rivertown has a slight diversification demerit, 16 years recent broadcast experience for its 55% principal and three years broadcast experience for its 45% principal, no minority preference and no credit for auxiliary power. With or without considering the integration criterion, Sample is the superior applicant.

7. The ALJ's denial of Rivertown's Motion to Enlarge a Misrepresentation Issue against Sample must be sustained.

The ALJ's denial of Rivertown's October 4, 1993, Motion to Enlarge Issues against Sample was correct.

Rivertown's Motion was denied because it abounded in

speculation and failed to present a prima facie case against Sample. For example, Rivertown failed to provide affidavits from any person with personal knowledge of the facts surrounding Ms. Sample-Day's termination from KKSI as required by 47 C.F.R. 1.229. In addition, David Brown's affidavit was rejected because it was based on unreliable hearsay. Ramon Rodriguez and Associates, Inc. 7 FCC Rcd 2633, ¶ 8 (1992). Simply, Rivertown failed to present evidence by any reliable means that Sample misrepresented her termination from KKSI to the Commission.

In the subject amendment of September 17, 1993, Ms. Sample-Day explained that she had been terminated, and that she was seeking part-time employment with various broadcast stations. In its exceptions, Rivertown asks the rhetorical question, if Ms. Sample-Day was satisfied with part-time employment, why was she not retained by KKSI in a part time position? However, Rivertown has failed to demonstrate that this question raises substantial and material questions regarding Sample's willingness to misrepresent information to the Commission. These are necessary predicates to adding a hearing issue. Astroline Communications Limited Partnership v. FCC, 857 F.2d 1556, (D.C. Cir. 1988); 47 U.S.C. Section 309(e).

Rivertown cites Kate F. Thomas, 8 FCC Rcd 7630 (Rev. Bd. 1993) for the proposition that facially contradictory facts can require the addition of misrepresentation/lack of candor

issues. However, Thomas and cases cited therein are distinguishable from Sample. In Thomas, the applicant reported no involvement (emphasis in original) in her son's broadcast stations, yet she produced documents which indicated management level responsibilities with a plethora of duties at the precise time of her "no involvement." The questions surrounding this matter were heightened when the applicant explained variously that the contradiction was caused by a consultant's misunderstanding and that the representations are not inconsistent. The ascribed motive for the contradiction was that the applicant was trying to inflate its comparative credentials, to diminish the appearance of its continuing connection with family-owned stations, or to extricate itself from the tangle of its own responses. In light of the inconsistencies, apparent motives and decisional nature of the issue, the Board found addition of issues "unavoidable."

This is distinguishable from Sample because Ms. Sample-Day has not tried to mislead the Commission as to her broadcast experience. It came well after the hearing, and Sample received no comparative benefit from her termination. Ms. Sample-Day was an at will employee who could terminate her own relationship with KKSI at any time. Rivertown's query as to why Sample-Day did not seek part time employment at KKSI is immaterial.

It is well established that the Commission requires an extant desire to deceive or mislead in order to find mis-

representation. Muncie Broadcasting Corp, 89 FCC 2d 123, 128 (Rev. Bd. 1982), *rev. den.*, 54 RR 2d 42 (1983); Scioto Broadcasters, 5 FCC Rcd 5158 (Rev. Bd. 1990). Rivertown shows no motive for Ms. Sample-Day to have made any misrepresentations regarding her employment. In a far-reaching attempt to find motivation, Rivertown speculates wildly that Bruce Linder was motivated to conceal from Ms. Sample-Day that she was terminated for poor election coverage so that she would file a false amendment and not detract from Sample's comparative case.

Rivertown has nothing to support that Sample-Day was terminated for poor election coverage except the unreliable hearsay of David Brown. Rivertown has provided no evidence or statement from anyone with personal knowledge to support its conjecture. Rivertown has not shown why Sample should have such a concern or that such a concern would be justified. Regardless of whether KKSI's Operation's Manager criticized Sample-Day's election coverage, there is no reliable showing that this was the basis for her termination. Allegations of conclusory facts or based on mere information and belief are inadequate to support alleged misrepresentation issues. Bilingual Bicultural Coalition v. FCC, 595 F. 2d 621 (DC Cir. 1978).

#### 8. CONCLUSIONS

Sample is fully qualified under the basic issues added against it. It has demonstrated that O-Town and its prin-

cipals will have no connection with the ownership or operation of the partnership or the Eldon station; that Bruce Linder has had no involvement in the planning or developing the application; and, that Sample-Day is in full control of the applicant and will be so for the new Eldon station. Moreover, Sample is the comparatively superior applicant whether integration is considered or not.

Accordingly, grant of Sample's application must be sustained and Rivertown's exceptions denied.

Respectfully Submitted,

SAMPLE BROADCASTING COMPANY, L.P.

By 

John S. Neely  
Its Attorney

December 23, 1993

Miller & Miller, P.C.  
P.O. Box 33003  
Washington, DC 20033



CERTIFICATE OF SERVICE

I hereby certify that on this 23 day of December, 1993, a  
copy of the foregoing document was placed in the United States mail, first  
class postage prepaid, addressed to the following:

Norman Goldstein, Esq.  
Mass Media Bureau, Hearing Branch  
Federal Communications Commission  
Washington, DC 20554

Donald E. Ward, Esq.  
Law Offices of Donald E. Ward, P.C.  
1201 Pennsylvania Avenue, NW  
Fourth Floor  
Washington, DC 20004

A handwritten signature in cursive script, appearing to read "J. S. Neely", written over a horizontal line.